

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 13, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP838-CR**

**Cir. Ct. No. 2012CF5119**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ERIC G. PERKINS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Eric G. Perkins appeals a judgment of the circuit court convicting him of second-degree reckless homicide and second-degree recklessly endangering safety while armed, both with use of a dangerous weapon and as a party to a crime. He also appeals an order denying his motion for

resentencing. Perkins argues that he was sentenced on the basis of inaccurate information about his prior criminal record. We affirm.

¶2 A defendant has a due process right to be sentenced based on accurate information. *State v. Travis*, 2013 WI 38, ¶17, 347 Wis. 2d 142, 832 N.W.2d 491. To be entitled to resentencing, a defendant “must establish by clear and convincing evidence that the circuit court actually relied on the inaccurate information.” *Id.*, ¶22. “Whether the circuit court ‘actually relied’ on the incorrect information at sentencing ... turns on whether the circuit court gave ‘explicit attention’ or ‘specific consideration’ to the inaccurate information, so that the inaccurate information ‘formed part of the basis for the sentence.’” *Id.*, ¶28 (quoting *State v. Tiepelman*, 2006 WI 66, ¶14, 291 Wis. 2d 179, 717 N.W.2d 1). If the defendant shows that the sentencing court actually relied on inaccurate information, “the burden shifts to the State to show that the error was harmless.” *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423 (citation omitted). “An error is harmless if there is no reasonable probability that it contributed to the outcome.” *Id.* (citation omitted).

¶3 Perkins argues on appeal that the circuit court relied on inaccurate information at sentencing because the circuit court stated that he had been “adjudicated delinquent of an offense involving the robbery of a man while wielding a weapon.”

¶4 According to the presentence investigation report, Perkins was charged as a juvenile with armed robbery, but was adjudicated delinquent of theft. The juvenile petition stated that Perkins was carrying a staple gun, which

resembled a real gun, when he robbed the victim, who thought the gun was a real gun.<sup>1</sup> At the sentencing hearing, referring to Perkins' juvenile record, the circuit court stated: "The armed robbery, regardless of what you thought that weapon was—although it was amended to a theft—you were found delinquent." Later in the hearing, the circuit court also stated, "He has been adjudicated delinquent of an offense involving the robbery of a man while wielding a weapon."

¶5 The circuit court's statement that Perkins had been adjudicated delinquent "of an offense involving the robbery of a man while wielding a weapon" appears to have been a factual description of the circumstances of the crime for which Perkins was adjudicated delinquent, as laid out in the presentence investigation report, not an assertion that Perkins had been found delinquent for armed robbery. This view of the circuit court's statement is bolstered by the fact that the circuit court had pointed out that the armed robbery charge had been amended to theft only moments earlier.

¶6 Even if the statement was inaccurate, however, any error was harmless because there is no reasonable probability that it contributed to the outcome of this case. This was a very serious case. After an altercation, Perkins and his friends returned to the scene of the dispute and shot a high-powered rifle in the direction of a store, killing one innocent bystander and wounding another. When the police tried to arrest Perkins later in a residence, he resisted arrest, physically fought with the officers trying to arrest him, and tried to disarm one of the officers. In imposing sentence, the circuit court focused on the seriousness of

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<sup>1</sup> We do not have the juvenile petition before us. These facts are recounted in the presentence investigation report.

the crimes and Perkins' continued pattern of undesirable behavior that began as a juvenile and had now escalated into a homicide. The circuit court also placed heavy weight on the fact that Perkins took no responsibility for his actions, concluding that he posed an unacceptable risk to society. To the extent the circuit court's statement about Perkins' juvenile adjudication could be considered inaccurate, the error is harmless because the circuit court focused on other factors in making its sentencing decision and there is no reasonable probability that Perkins would have otherwise received a lighter sentence.

¶7 Perkins raised an additional argument in his postconviction motion that he has not renewed on appeal. He argued that the circuit court incorrectly stated that his record included "a number of other disorderly conducts" when, in fact, he had only one prior disorderly conduct *conviction*. The circuit court denied this postconviction claim on the grounds that its statement about Perkins was not inaccurate; Perkins had been charged with disorderly conduct multiple times, either as a juvenile or as an adult, and the circuit court was referring to Perkins' overall pattern of behavior, not solely his convictions. Although the State addresses this argument in its respondent's brief, Perkins did not raise this argument on appeal. Therefore, we do not consider it.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

